

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6578 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HEIR OF DECEASED GAGUBEN MULJIBHAI PATEL

Versus

THE DEBT SETTLEMENT OFFICER

Appearance:

MR AD MITHANI for Petitioner

MR HL JANI for Respondents No. 1, 2

MR DM THAKKAR for other Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 10/12/97

ORAL JUDGEMENT

Heard the learned counsel for the parties.

2. Under the order dated 24th December, 1981, the Debt Settlement Officer held the debtor to be a rural debtor under section 2(d) of the Act and declared the debt of Rs.1400/- of his creditor, the petitioner herein, as fully exempted. The land of survey No.226/2

admeasuring 12 acres and 37 gunthas which was mortgaged by the debtor to the creditor and in possession of the creditor was declared to be free from mortgage in favour of the debtor. Further order has been passed directing the creditor to pay Rs.5000/-. This amount was ordered to be paid as the land was retained by the creditor for 27 years and the income which he drew therefrom has been taken into consideration and after giving deduction of the expenses incurred by him as well as the double of capital amount of Rs.2800/- this amount was ordered to be paid.

3. The appellate authority has modified that order and the debtor was declared to be a marginal farmer and he was declared to be exempted from making payment of his debt of Rs.1400/- towards the creditor. The order of Debt Settlement Officer, Surendranagar to pay Rs.5000/to the debtor by the creditor as compensation has been set aside. So the facts are not in dispute that the land in dispute was mortgaged by the debtor to the creditor and he cultivated and remained in possession of the same for 27 years. He has taken all the fruits of this land.

4. The counsel for the respondent-debtor made a statement before this Court that Rs.1400/- has also been paid by the debtor to the creditor. This fact has not been disputed by the counsel for the petitioner. After going through the orders of the appellate authority I do not find any illegality therein which calls for interference of this Court. The debtor has taken only Rs.1400/- from the creditor and the land has been mortgaged and possession of the same was with the creditor. The creditor derived the fruits of the land for 27 years.

5. The learned counsel for the petitioner is unable to point out any error apparent on the face of the order of the appellate authority which calls for interference of this Court. The appellate authority has on the contrary taken a lenient view in the matter and compensation which is ordered to be paid by the Debt Settlement Officer by the creditor to the debtor has also been set aside. As against advancing the loan of Rs.1400/-, the petitioner-creditor has retained the land of debtor for 27 years and he has earned much more profits than otherwise he could have been. This Court may not be justified in extending its jurisdiction in the matter under Article 227 of the Constitution of India. The Gujarat Rural Debtors' Relief Act, 1976 (hereinafter referred to as 'the Act, 1976') is a special legislation and in fact a benevolent piece of legislation to relieve

the debtors as defined under the Act from exploitation of the creditors. Under the Act, 1976 against the order of the appellate authority, no further appeal or revision or review has been provided to any other Court or to this Court. The obvious object of non providing of any further remedy of appeal, revision or review against the order of the appellate authority passed under the Act, 1976 is to give finality to the decision of the said authority. This Court under Article 227 of the Constitution cannot assume unlimited prerogative to correct all species of hardships or wrong decisions. The exercise of jurisdiction by this Court under Article 227 of the Constitution must be restricted to cases of grave dereliction of duties and flagrant abuse of fundamental principles of law or justice where grave injustice would be done unless this Court interferes.

6. Taking into consideration the totality of the facts of this case, in case, any interference is made in the order of the appellate authority passed and impugned in this special civil application then grave injustice would be done by this Court to the respondent-debtor. As stated earlier, the appellate authority has taken a lenient view in the matter. Otherwise also, substantial justice has been done to the debtor herein and this Court sitting under Article 227 of the Constitution will not perpetuate any injustice to the debtors. Where from the order impugned in this special civil application it is clearly borne out that substantial justice has been done, so otherwise also no interference of this Court is called for in the matter.

7. In the result, this special civil application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated. No order as to costs.

zgs/-